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The Law Society of Manitoba

COMMUNIQUÉ

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In Memoriam

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President's Report

DOUG BEDFORD

Most of us in recent years have read the articles or watched the stories on the news. There are critical shortages of professionals in Manitoba in a certain occupation. And, apparently, foreign trained men and women are ready and willing to meet the demand but are barred from doing so by the allegedly restrictive practices of the self-governing profession in question. No wonder then that the governing party in Manitoba introduced Bill 24 this spring with the long-handled title "The Fair Registration Practices in Regulated Professions Act."

You have recognized, of course, that the profession in question is the medical profession and that the need for doctors is particularly acute in rural Manitoba. However, the new Bill is not directed just at the medical profession. [As a consequence of the election, the Bill died, but it is slated for reintroduction this September as Bill 19. It is being sponsored by the Minister responsible for labour and immigration.] It covers all regulated professions, including the legal profession and, hence, my decision to draw attention to it in this, my first report as your president. One suspects that the sponsor of this Bill was reluctant to single out the medical profession and I admit that there is at first instance a wholesome aura about treating all professions "equally". However, we in the legal profession need to be concerned about this Bill.

A quick overview of some recent history regarding the practice of law in Manitoba and the admission of "foreign" trained lawyers (be they from other parts of Canada or outside of Canada) is in order. With the introduction of the Charter in 1982, law societies recognized that existing rules regarding transfers of lawyers from one province to another needed to be revisited and modified as they did hinder the "free mobility" of lawyers across the country. Under the umbrella of the Federation of Law Societies of Canada, "mobility rules" were drafted and adopted in all of the common law jurisdictions in Canada.

You may recall Jon van der Krabben reporting in January of this year that full national mobility had been reached in November 2006 when PEI and the Territories adopted the Territorial Mobility Agreement. The mobility rules permit most practising lawyers from other parts of Canada to appear in our courts and/or to work in Manitoba for a fixed period of time each year without writing transfer exams, paying fees or becoming members of the Law Society of Manitoba. The agreement also facilitates "permanent mobility", allowing most Canadian lawyers to become a member of another Canadian law society without writing transfer exams. (The Territories have only signed on to the Permanent mobility provisions at this time).

The legal profession in Manitoba has benefited from another initiative of the Federation. The National Committee on Accreditation ("NCA"), established by the Federation, reviews the credentials of any lawyer trained outside Canada who wishes to immigrate to Canada and set up practice here. While only a small fraction of the total number of applicants choose Manitoba as her/his new home, it makes good sense for a single committee to review all such applications so as to ensure consistency in treatment across the country. If each jurisdiction in Canada applied its own criteria, applicants would inevitably gravitate initially to the jurisdiction with the least demanding screening process and, if that happened to be Manitoba, our Law Society would be faced with the cost and challenge of assessing the merits of law degrees from any number of foreign law schools.

Finally, with both cost and improved training in mind, we in Manitoba replaced our traditional articling program three years ago and, with

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Federal Competition Bureau... Benchers Express Concern

Benchers Meeting Highlights

The Benchers of the Law Society of Manitoba met on June 21, 2007 immediately following our Annual Meeting (at which minutes were approved, the Annual Report was received, the audited financial statements were approved, and Deloitte & Touche were reappointed as our auditors).

The following are some highlights of that Benchers meeting:

- Benchers expressed concern about the draft report of the Federal Competition Bureau which is examining the anti-competitive practises of some regulated professions. The draft report seemed to focus heavily on consumer protection (more competition to bring lower prices) at the expense of public protection. The Federation of Law Societies of Canada has sent a response to the Bureau;

> "...a significant increase in the number of serious charges"

- Benchers approved some housekeeping rule changes related to the exemptions from filing an annual trust account report and sent back some draft rules relating to the mandatory reporting of continuing legal education for revision;

- A monitoring report on discipline was reviewed. Benchers noted a significant increase in the number of serious charges last year (many of which required urgent meetings of the Complaints Investigation Committee) and passed a "motion of commendation" in appreciation for the volunteers on the Committee who were required to meet so frequently, often on short notice;

- Benchers reviewed the year end financial statements and noted that Law Society funds operated pretty much as budgeted. They noted that while the Reimbursement Fund had paid out considerably more for claims than had been budgeted, this was largely a matter of timing as all of the Kunzman claims have now been dealt with.

Outstanding Interest on Client Accounts

Pursuant to Rule 5-57 of the Rules of the Law Society of Manitoba, a lawyer is entitled to charge interest on unpaid fees, charges or disbursements where the lawyer and client have so agreed. Such interest is calculated from a date that is at least one month after the date the bill is delivered to the client.

The rate of interest that may be charged shall not exceed the rate established under Section 161 of the Income Tax Act (Canada) on the date the bill is delivered. The interest rate effective for the period July 1, 2007 to September 30, 2007 is 9%.

CIBC and Scotiabank Join List of Protocol Lenders

The Canadian Imperial Bank of Commerce, including PC Financial and First Line, have now incorporated the Western Law Societies Conveyancing Protocol into mortgage instructions to Manitoba lawyers for the closing of residential real estate transactions. Scotiabank expects revisions to its mortgage instructions to be complete by mid-August. CIBC and Scotiabank join Bank of Montreal, Royal Bank of Canada and TD Canada Trust in offering the Protocol closing process for use by lawyers in the West at no additional cost to the consumer or lender.

For more information about the Protocol closing process please go to http://www.lawsociety.mb.ca/conveyancing.htm.

Flexible Policies and Parental Leave Policies Help Recruit & Retain Talent

Report of the Equity Ombudsperson

Brenlee Carrington Trepel, Equity Ombudsperson

Legal employers are increasingly relying on flex-time and parental leave policies to help recruit and retain top talent.

The CBA's National Magazine, recently published a couple of excellent articles about how the legal profession is incorporating parent-friendly and flexible working arrangements so as to increase its attractiveness to its best and brightest members.

In a cover story in the March 2007 issue of the National, lawyer and writer Janice Mucalov pointed out that more and more lawyers are taking parental leave with their law firms' blessings. She reported that: "Public sector legal employers and corporate law departments have offered year-long parental leaves and 100% salary top-ups for some time. Private firms aren't yet as generous, but they too now offer increased financial support to female lawyers on leave. Paternity leave is still less commonly granted (and less frequently requested). But a gradually increasing number of new dads are bidding their firms a temporary farewell to spend time at home with their newborns."

Firms Offer Exciting New Policies

At McInnes Cooper in Halifax, reports Mucalov, " a new partner policy enables female partners to receive their full draw for the first six months at home with their children."

Mucalov interviewed Kirby Chown, Ontario regional managing partner for McCarthy Tetrault in Toronto. Chown revealed that the average maternity leave at McCarthy's is a full nine months.

McCarthy is, according to the article, "piloting a new Parental Support Program in the Toronto area: Six coaching sessions with an experienced family therapist are offered and paid for by the firm, says Chown. Available to both male and female lawyers, the idea is to help the lawyer and his or her spouse (they attend together) deal with the impact of family life on the lawyer's work. One session, for example, might cover how to share childcare duties when both parents work."

"These six coaching sessions are matched by six sessions between the lawyer and the firm's Director of Associates to chat about issues such as flextime or a change in direction of practice upon the lawyer's return from leave. The sessions are staggered two before, two during and two after the leave."

Flex-time Benefits All

In The National's April/May 2007 issue, writer Ann Macaulay reports that according to a new Catalyst Canada survey: "As firms compete for top talent, many lawyers say that a top priority is finding a firm where the environment respects and supports family and personal commitments. But more than half their their firms don't adequately provide flexible work arrangements, and three quarters of associates say that partners must accept that different working styles can be effective and successful."

Kirby Chown, Ontario regional managing partner at McCarthy Tetrault LLP, is once again quoted: "As firms continue to battle for the best and brightest, associates will consider which ones might promote a healthier work/life balance. In this war for talent, the very best students are all sought after by the firms. If they leave the practice of law or go to a competitor because the law firm isn't attuned to their concerns, that's just a loss of talent...What's interesting is that it's now less of a gender issue. There are more young men who want to spend time with their families."

The bottom line matters in the legal profession—and family friendly policies make good business sense by providing employers with a competitive advantage.

If you have a respectful workplace issue that you'd like to discuss with me, remember that all services are provided free of charge and that all contacts are strictly confidential.

Contact me confidentially by phone: 942-2002; or toll-free 1-866-771-2002; email: brenleecarrington@shaw.ca; fax: 474-1161; mail: P.O. Box 2555-Station Main, Winnipeg, Manitoba, R3C 4B3.

You can also visit the Equity Initiatives site at www.lawsociety.mb.ca/equity.htm

Watch Out for Cheque Fraud

Sherri Jack
Director of Audit

Cheque fraud is not a new phenomenon. Over the years, it has been uncovered by Law Society auditors investigating misappropriation schemes, and on occasion law firms have reported thefts of both trust and general funds. These thefts have, however, typically originated from within the law firm. Now, attempts to negotiate fraudulent cheques are coming from outside the firm.

In the fall of 2006, a lawyer called the society to report that two fraudulent cheques (both in small amounts) had cleared his bank account. Although the cheques looked exactly like the lawyer's own cheque stock, the cheques were counterfeit and signed by someone unknown to the lawyer. The lawyer detected the withdrawals while doing the monthly trust reconciliation and promptly notified the bank. The bank then reimbursed the trust account and took steps to monitor the account activity until the lawyer could open a new account.

A more recent attempt to defraud a Winnipeg law firm was thwarted when a quick thinking bank teller became suspicious of a person attempting to cash a trust cheque at a branch in Alberta. The law firm was able to confirm the teller's suspicions that a trust cheque had not been issued to that particular person. While the teller was speaking on the phone to the law firm about the cheque, the fraudster became nervous and left the bank. In this situation, the law firm was fortunate that the bank was alert to the attempt before it went any further. Unfortunately, fraudulent cheques are not always identified when they are cashed. Fraudulent cheques may be (and often are) cashed and then ultimately clear the account holder's bank. If the firm does not diligently monitor its trust account these withdrawals may initially go unnoticed and it may become difficult to recover the missing funds.

There are three main types of cheque fraud: forged, altered and counterfeit. A forged cheque is an actual cheque that is stolen and signed by an illegitimate signing authority. An altered cheque is an actual cheque of an account holder that has been properly issued, but is intercepted and altered by a fraudster. A counterfeit cheque is not a true cheque of the account holder but rather a reproduced look alike.

How can you protect your law firm from fraudulent withdrawals on your trust account? Here are some basic controls to help you in the monitoring process:

- The monthly trust reconciliation is one of the law firm's most important controls. Timely preparation of the reconciliation is not just a Law Society rule; it is a key means of identifying fraudulent withdrawals from the trust account. Timely preparation is crucial as early detection can catch a scheme before it escalates. There are legal considerations too. The ability to recover stolen funds from the bank may be affected by the length of time it takes to notice and report the incident;
- Keep cheque books and cheque stock locked up;
- Never sign cheques in blank and do not use a signature stamp; and
- When re-ordering cheques use a continuous set of cheque numbers.

While it may not be possible to completely eliminate the risk of fraudulent withdrawals, if you implement the basic controls noted above they will help reduce that risk and increase the likelihood of detection in the event an unauthorized withdrawal does occur.

NOTICE OF BENCHERS MEETING

The next meeting of the Benchers of the Law Society of Manitoba will be held on Friday, September 7, 2007 at 2:00 p.m. at Elkhorn Resort in Clear Lake, Manitoba. Members of the Society are encouraged to attend and participate in the deliberations of the governing body.

Benchers meetings for the rest of the 2007/2008 year are as follows:

October 25, 2007
December 13, 2007
January 31, 2008
April 3, 2008
May 29, 2008

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Greener Pastures

Allan Fineblit, Q.C.
Chief Executive Officer

As a result of a near fatal encounter with a hula-hoop, I have always tried to avoid fads. I never owned a pet rock or a beanie baby. I never even considered streaking the Grey Cup game. I did tie-dye a shirt once but had enough sense never to wear it. Now, separating fads from cutting edge isn't always easy. I thought fax machines were a fad and refused to buy one until most other lawyers had them. I have a vast collection of skinny ties that not even Tim Preston will take off my hands.

I liked to think that I was a cutting edge environmentalist. I was reducing, reusing and recycling 30 years ago. I picked up other people's litter and own several battery chargers and a vast collection of rechargeable batteries. I insulated my house and even bought those low flow shower heads. So as I watched the environmental movement emerge, I was pretty pleased to have been on the cutting edge. But lately I've begun to worry that perhaps the new commitment to the environment I am seeing everywhere is really just a fad. Suddenly everyone, from Al Gore to Arnold Schwarzenegger, has become an environmentalist and this has made me worried. You see, fads by definition are meteorically popular but at some point they go out of fashion (think of Nehru jackets).

I worry that Arnold will move on to the next hot fad, leaving me with no place to fill up my hydrogen car (okay, I don't have a hydrogen car but if I had one, that's what I'd worry about). While I find it hard to take the Governator seriously, I do take climate change seriously and so, in spite of my fear of fads, I've decided to stay the course. After all, I drank martinis long before they were popular and their recent popularity hasn't slowed me down a bit.

I know that I can do quite a bit better too. For me, I am going to walk, or run, or bus or bike to work more often. I'm going to buy a new high efficiency furnace for my house. I'm going to eat as much local produce as I can. At work, I'm going to stop printing emails just in case I might need them some day and I'm going to promote more conference calls instead of in-person meetings. It's probably time to replace our inefficient old HVAC system for a modern energy efficient one.

I expect that there are a lot more like-minded lawyers out there that have come up with ideas for ways they can be more environmentally friendly in their work and I would be really interested in hearing about them. I'll even give a prize every issue for a lawyer who makes a difference. This month's winner is Grant Mitchell. Not because he runs everywhere (that's just his obsessive personality, not environmentalism!), but because his own version of bottled water is to take an old juice bottle and fill it from the tap.

Well that's enough for me, I better go home now. I just need to pump up these cutting edge sneakers I bought in 1986.

Fast Lawyers 2007.

Allan Fineblit, Q.C

Every year I applaud the fast lawyers who run for a good cause in the Manitoba Marathon (every year I miss a whole lot of you, so please let me know who I missed!)

Leilani Kagan was the fastest marathoner, finishing in an amazing **3:29:17**, followed closely by ***Brent Czarnecki, Michael Choiselat, Gary Goodwin, Waldy Derksen, Chris Tait, Bruce Gregory, Jordan Lee-Wing*** and ***Sarah Lugtig***.

Saul Simmonds was the fastest half marathoner I spotted, followed by ***Ron Menec, Grant Mitchell, Andrew Swan, Joel Remis, Dave Bowman, Alan Diduck, Glen Joyal, John Poyser, Cal Friesen, Vivian Rachlis, Allan Finkel, Joe Gallagher, Vic Bargen, John Guy, Jo-ann Natuik, Arthur Chapman, Jennifer Cooper, Wells Peever*** and ***Kathy Kalinkowsky***.

While I didn't search the 10 kilometre walk, I did note perennial marathoners ***George Chapman*** and ***Dick Scott*** finished hand in hand (as good friends should). So...who did I miss?

President's Report
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Saskatchewan and Alberta, developed CPLED. Being part of a shared program like CPLED requires that we adhere to certain common policies regarding the delivery of the program and the evaluation of those participating in it.

Now, I return to Bill 19. The language in the present Bill covers all admissions to the practice of law in Manitoba, including transfers from other provinces where, as noted, most foreign trained lawyers first seek to practice, and CPLED. But we in Manitoba, through the NCA and CPLED have effectively delegated to larger bodies some of the work we used to do. If, as a result of Bill 19, the standards in Manitoba change and we cannot persuade fellow law societies to agree to new, "made in Manitoba" strictures, we may be compelled as a Law Society to withdraw from national and regional initiatives which have been good for us and for Manitoba.

Allan Fineblit brought this Bill to the attention of the Benchers at our May meeting. A number of Benchers expressed concern about the Bill and, in response, I directed that a "President's Committee" be set up to develop proposals for the Benchers to consider by way of reply. I am pleased to report that Vice-President Grant Mitchell and fellow Benchers Harvey Secter, David Kroft and Jack Cram have agreed to sit on it along with past presidents Doug Finkbeiner and Garth Smorang. Ms Alicia Laufer, a lawyer from Argentina, now living in Manitoba and hoping to enter practice here, will assist as the final committee member with providing the perspective of a recent professional immigrant. I anticipate reporting in the fall on the committee's work.

I began by identifying the medical profession as being the focus of media reports regarding critical shortages of trained professionals – particularly in rural Manitoba. I remind everyone that in his last report as President in the April Communiqué, Jon van der Krabben identified as a current issue the undersupply of lawyers in rural, especially northern, Manitoba. Jon was right. Indeed, only about 10% of our members practice generally outside the City of Winnipeg, but about 40% of our fellow Manitobans live outside the City. This concern was raised at the June Benchers' meeting and was echoed by all of the Benchers from outside Winnipeg. Two also observed that the problem threatens to get worse with retirement in sight for a number of long-time practitioners in southern Manitoba and no obvious candidates to continue their practices. While it was not clear to any of us at the June meeting what the Law Society of Manitoba can do in a practical way to reverse this trend, we did decide that the subject should be discussed further, in greater detail, at an upcoming Benchers' meeting. After all, the Law Society of Manitoba exists to protect the public interest in being served by a competent, honourable and independent legal profession and the public interest is not being served well if there are not enough lawyers to serve Manitobans. And if we do not address the problem, eventually others will, as is demonstrated by the proposed "Fair Registration Practices in Regulated Professions Act".

Know Your Client Regulations

As part of its continuing initiative to combat money laundering and terrorist financing, the federal government has released new draft regulations under the ***Proceeds of Crime (Money Laundering) and Terrorist Financing Act***. These regulations are drafted to apply to the way lawyers (and others) identify clients, verify their identity, and maintain client records. The regulations have been published in Part 1 of the June 30, 2007 edition of the ***Canada Gazette*** (online at canadagazette.gc.ca) for a 60-day comment period, to be followed by consultations. This is "pre-publication" of the regulations only. They will **not** be in force until a date to be determined after the consultations.

The government's objectives through these regulations are to continue the fight against money laundering and terrorist financing and to demonstrate to the global community that Canada's anti-money laundering regime meets international standards in this area.

The Federation of Law Societies of Canada, through its Anti-Money Laundering Committee, has been in discussions with the Department of Finance on the subject of these new regulations for the past year. The Department will continue its discussions with the Federation and other stakeholders on the draft regulations through the consultations that will follow the pre-publication.

These ongoing discussions are part of a dialogue that began a number of years ago between the Federation and the federal government about the Act. The primary concern for the legal profession at the outset was the threat to the independence of the bar by requiring lawyers to secretly report confidential client information to the government with respect to suspicious transactions, and to report large cash transactions.

The Federation, with the Law Society of British Columbia, commenced a constitutional challenge to the Act and applied successfully for injunctive relief from the application of the reporting requirements to lawyers pending the hearing of the challenge. **The injunction continues to apply and covers any new regulations under the Act affecting lawyers including these.**

Individual law societies then adopted the Federation's Model "No Cash" Rule. The government subsequently decided to exempt lawyers, through an amendment to the Act, from the reporting requirements. The Minister of Finance, in speaking to the amendment, acknowledged that the Model No Cash Rule was intended to deal with risks in the legal profession associated with cash placement and money laundering.

Independent of the government's current initiatives, the

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Membership Changes

Practising to Non-Practising

The following members have changed their status from practising to non-practising effective on the date shown:

June 1, 2007	**Natasha L. Brown**
July 1, 2007	**Kirk R.P. Kirby**

Non-Practising to Practising

The following members have changed their status from non-practising to practising effective on the date shown:

June 1, 2007	**Arnold B. Dettman**
June 13, 2007	**Esmerald K. Bautista**
July 1, 2007	**Derwin Petri**
July 1, 2007	**Donald L.S. Rusnak**

Inactive to Practising

The following members have changed their status from inactive to practising effective on the date shown:

June 9, 2007	**Melinda L. Lofchick**
June 11, 2007	**Leah F. Craven**
July 9, 2007	**Jennifer L. Dunik**

Know Your Client

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Federation has prepared and referred to law societies a second Model Rule, this one focused on Client Identification and Verification Requirements.

The government is committed to demonstrating that its anti-money laundering regime meets international standards by including the regulation of lawyers. As a matter of appropriate regulation, the legal profession, in the public interest, must move proactively to reduce the risks that money laundering raises within the profession in a manner that preserves and protects solicitor-client privilege and the independence of the bar. Law societies used this approach successfully through their adoption of the Model No Cash Rule. The second Model Rule will be an important addition to law society regulation.

Practising to Inactive

The following members have changed their status from practising to inactive effective on the date shown:

June 1, 2007	**Robert J. Tropak**
June 1, 2007	**Michael A. Thomson**
June 30, 2007	**M. Anne Bolton, Q.C.**
July 1, 2007	**Trina M.L. McFadyen**

Transfer from Another Province

The following members were called to the Bar of Manitoba and are now entitled to practice law in this jurisdiction, having fulfilled the requirements of ***Rule 5-14:***

June 28, 2007	**Lena McAlinden** of the Law Society of Saskatchewan
June 28, 2007	**Matthew Duffy** of the Law Society of Upper Canada

Allan's Odds&Ends

Allan Fineblit, Q.C.
Chief Executive Officer

- Insurance paralegal **Bonnie Harvey** retired from the Law Society in July of 2007 after more than 13 years with our Insurance Department. Bonnie plans to travel and be an active grandmother. We will miss you Bonnie!

- Congratulations to **Jan Lederman** who got to take another thing off her "to do list" when she climbed to the base camp of Mount Everest.

- For the three of you who didn't hear directly from Brian, **Judge Midwinter** caught a very large fish at the Northern Bar, Flin Flon edition. He will send you photos if you ask (or even if you make eye contact!).

- Congratulations to Law Society auditor, **Colleen Halpenny**, who won the Canadian Institute of Management Award for professional achievement and service excellence.

- The City of Winnipeg has a form lawyers should now use to obtain a final water balance on the sale of property. The form is available at www.winnipeg.ca/waterandwaste/billing/default.stm.

- Congrats to Winnipeggers **Michael Weinstein** (son of Bencher Joel) and **Steven Meltzer** who won the International Negotiation Competition in Singapore, representing the U of Leicester Law School. Michael plans to article with Hill Abra Vincent this fall.

In Memoriam

David Friesen, Q.C., who passed away on April 14, 2007 at the age of 95. Mr. Friesen received his call to the Bar on June 18, 1941. He began his legal career practising as a partner in the firm, Buhr & Friesen, and later opened the firm, Friesen and Associates where he continued to practise until 2005. In 1951, Mr. Friesen and his wife, Katherine, founded Qualico Developments Ltd. Mr. Friesen was a lifetime member of the First Mennonite Church, was a founding member of the Mennonite Benevolent Society, Autumn House Inc., Menno Simons Christian School, and Crosstown Credit Union. He also served as President of the Manitoba Home Builders Association and the German Canadian Business and Professional Associations of Manitoba, and was a member of the Winnipeg Planning Committee. Mr. Friesen was appointed Queen's Counsel in 1956.

The Honourable John Alton Duncan, who passed away on June 5, 2007 at the age of 75. Mr. Duncan received his call to the Bar on October 1, 1958. He began his legal career practising law in Morden with the firm, Duncan and Duncan, and then later with Duncan Hanssen & Hoeschen. In December, 1978 Mr. Duncan was appointed Queen's Counsel. He served as President of the Law Society of Manitoba from 1980 to 1981. In 1991 he was appointed a Judge of the Court of Queen's Bench, Family Division, in Brandon and in 1996 was transferred to the Family Division of the Court of Queen's Bench in Winnipeg, where he continued to serve as a Judge until his retirement in 2006.

The Law Society of Manitoba

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